

# Bickerstaff Heath Delgado Acosta LLP

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January 11, 2010

*Via Hand Delivery*

Ms. LaDonna Castañuela, Chief Clerk  
Office of the Chief Clerk - MC 105  
Texas Commission on Environmental Quality  
12100 Park 35 Circle  
Austin, TX 78753

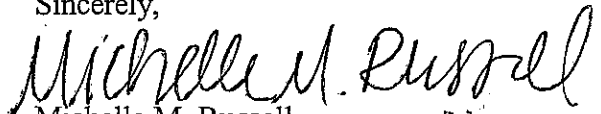
Re: *In the matter of the Executive Director's Report and Recommendation to Add Areas of Dallam County Priority Groundwater Management Area (PGMA) to North Plains Groundwater Conservation District; SOAH Docket No. 582-09-2350; TCEQ Docket No. 2008-1940-WR*

Dear Ms. Castañuela:

Enclosed is the original and seven copies of Protestants' Exceptions to the Administrative Law Judge's Proposal for Decision in connection with the above-referenced matter. Please file the original and seven copies, and return a filed-stamped copy to our courier.

Should you have questions or need to reach me, please call (512) 472-8021.

Sincerely,



Michelle M. Russell

Legal Assistant to Susan Maxwell

/mmr

Enclosures

cc: All parties on the service list

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
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# Bickerstaff Heath Delgado Acosta LLP

3711 S. MoPac Expressway Building One, Suite 300 Austin, Texas 78746 (512) 472-8021 Fax (512) 820-5638 www.bickerstaff.com

January 11, 2010

*Via Facsimile Only*

The Honorable Richard R. Wilfong  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701

TEXAS  
COMMISSION  
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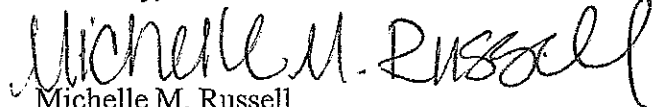
Re: *In the matter of the Creation of a Groundwater Conservation District for Priority  
Groundwater Management Area in Dallam County; SOAH Docket No. 582-09-  
2350; TCEQ Docket No. 2008-1940-WR*

Dear Judge Wilfong:

Enclosed is Protestants' Exceptions to the Administrative Law Judge's Proposal for Decision, in connection with the above-referenced matter. The original is being filed with the TCEQ and a copy of the document is being served on each of the parties.

Should you have questions or need to reach me, please call (512) 472-8021.

Sincerely,



Michelle M. Russell

Legal Assistant to Susan Maxwell

/mmr

Enclosure

cc: All parties on the service list

TCEQ DOCKET NO. 2008-1940-WR  
SOAH DOCKET NO. 582-09-2350

2010 JAN 11 PM 4: 48

CREATION OF A GROUNDWATER  
CONSERVATION DISTRICT FOR  
PRIORITY GROUNDWATER MANAGEMENT  
AREA IN DALLAM COUNTY

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§  
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CHIEF CLERKS OFFICE  
BEFORE THE  
TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**PROTESTANTS' EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S  
PROPOSAL FOR DECISION**

**TO THE HONORABLE COMMISSIONERS:**

COME NOW, Clifford A. Skiles, Jr., DVM ("Dr. Skiles"), and Poole Leasing Co., Inc. and Entrania Springs, LP (the "Poole Interests") (collectively referred to herein as "Protestants"), and jointly file these Exceptions to the Administrative Law Judge's Proposal for Decision ("PFD"), issued December 14, 2009 in the above-captioned proceeding before the Texas Commission on Environmental Quality ("TCEQ" or "Commission").

**I. INTRODUCTION**

The issue presented for the TCEQ's consideration in this case is whether the Commission will require regulation of groundwater simply for the sake of regulation, when the uncontradicted evidence shows that imposing regulation will provide no groundwater management benefit.

The Administrative Law Judge ("ALJ") has accepted the Executive Director's ("ED") arguments that it is irrelevant whether groundwater in the Areas needs to be regulated and whether imposition of regulations would accomplish any benefit. According to the ALJ the Commission need only look at whether it is feasible to impose regulation as proposed by the

Executive Director's Report<sup>1</sup> and recommendation. The ALJ's proposed decision is grounded in the following conclusions, regarding the scope of the inquiry on "district creation actions" for the Dallam County Priority Groundwater Management Area ("PGMA"), designated by rulemaking in 1990: a) the Legislature has not required a showing of the *need* for groundwater regulation for inclusion of remaining PGMA areas into a groundwater conservation district ("GCD"); b) the Legislature has not required a showing that there would be any *benefit* from inclusion of such remaining PGMA areas into a GCD; and, therefore, c) the sole question for this "pre-2001" PGMA is whether it is "feasible and practicable" to include the remaining three Areas (A, B and C) of Dallam County within the North Plains Groundwater Conservation District ("North Plains GCD" or "District"), as recommended by the ED. Framed this way, the ALJ finds that the ED has met his burden of proof supporting his "feasible and practical" recommendation. (PFD at 25).

Protestants, property owners in Areas A and C of Dallam County, disagree with the ALJ's construction of certain PGMA-related provisions of Chapter 35 of the Texas Water Code.<sup>2</sup> Protestants agree with the ALJ that the key legal issue in this proceeding is the proper construction of TCEQ Rule 293.19(b). (PFD at 2, 20). However, Protestants strongly disagree

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<sup>1</sup> All references herein to the "Executive Director's Report" or "ED's Report" are to the Executive Director's *Groundwater Conservation District Recommendation for Dallam County Priority Groundwater Management Area* (Dec. 2008), prepared by TCEQ staff pursuant to Commission Rules § 293.19(b)(1)-(2), and in the record as ED's Ex. A-1.

<sup>2</sup> The Executive Director's construction of TCEQ Rule §293.19(b)(6), accepted by the ALJ, effectively means that Dallam County landowners will have never been afforded an evidentiary hearing on issues involving the PGMA designation itself, including the need for and benefit from groundwater district regulation, factual issues that have historically been, and continue to be, a fundamental part of PGMA analysis. Such required findings date back to the original "Critical Area" statute, *see* Acts 1985, 69<sup>th</sup> Leg., R.S., ch. 133, § 5.01 (codified at Tex. Water Code § 52.060), and were in place at the time the Dallam County PGMA was designated by rulemaking in 1990. *See* Acts 1989, 71<sup>st</sup> Leg., R.S., ch. 936, § 4 (codified at Tex. Water Code § 52.057(b)-(c)). Nevertheless, statutory construction is not a decisive issue in this case and will not be further addressed.

with the ED's and ALJ's construction of the "effective management" requirement of § 293.19(b)(6)(A). The ED and ALJ would limit this inquiry to whether groundwater regulation by a GCD is "feasible," in the very general sense that the proposed GCD has lawful authority and resources that would enable it to extend its management program into the rest of Dallam County, without regard to whether that management by regulation can or will be effective in addressing any groundwater problems. In short, the ED's and ALJ's proposed standard for "effective management" in a pre-2001 PGMA is, essentially, "if TCEQ can regulate it, we will."

*This is not a rule construction conclusion that TCEQ is bound to accept.* Rule 293.19(b) has never before been construed by the Commission and the proposed construction reflects fundamental public policy considerations upon which the Commission has not previously spoken. Therefore, the Commission has complete discretion and authority to adopt a contrary (and more sensible) construction of its rule. Rule 293.19(b)(6)(A) establishes as one of the considerations for the Commission's decision:

whether the recommended district creation action can *effectively manage groundwater resources* under the authorities provided in Texas Water Code (TWC), Chapter 36;

(emphasis added). Because the recommended action proposed is management by the North Plains GCD, this consideration becomes not whether some theoretical exercise of Chapter 36 powers by a hypothetical GCD could effectively manage groundwater resources, but whether the North Plains GCD under *its* exercise of Chapter 36 authorities can effectively manage groundwater resources in the Areas. On the basis of the facts discussed below, Protestants submit that the answer is "No." Due to existing groundwater conditions in the Areas and the North Plains GCD's established regulatory programs, it is clear that effective management of groundwater resources in the Areas will not result from inclusion in the District.

## II. FACTUAL BACKGROUND

Because of the ALJ's and ED's narrow reading of TCEQ Rule 293.19(b)(6), little attention is given in the PFD to actual conditions in the Areas or to whether the regulatory program of the North Plains GCD is capable of providing effective management of the groundwater resources of the Areas. The record contains extensive undisputed evidence on these issues, which Protestants would summarize as follows:

### Geo-hydrologic Conditions in the Areas

- Existing groundwater reserves in the Areas are generally better (more saturated thickness) than in other parts of Dallam County.<sup>3</sup>
- However, production of groundwater in the Areas is generally more difficult due to lower transmissivity. For this reason, wells in the Areas simply do not produce as much water as comparable wells in other parts of Dallam County.<sup>4</sup> (This likely accounts for the better than average reserves currently remaining.)
- Because of these factors, the anticipated useful life of groundwater supplies in the Areas is generally longer than in portions of Dallam County within the North Plains GCD.<sup>5</sup>
- Also because of these factors, groundwater production in the Areas is significantly less than adjacent areas in the North Plains GCD. This is reflected by the aerial photograph attached hereto as "Exhibit B."<sup>6</sup> The amount of groundwater produced relates directly to irrigated acreage, shown as irrigated circles in Exhibit B. Clearly, less irrigation is taking place in the Areas. In fact, none is taking place in Area B.<sup>7</sup>
- Because pumpage in surrounding areas within the North Plains GCD far exceeds pumpage in the Areas, groundwater production in the North Plains GCD has a much

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<sup>3</sup> Protestants' Ex. 9, Testimony of Mike Thornhill.

<sup>4</sup> Protestants' Ex. 9, Testimony of Mike Thornhill; Protestants' Ex. 10, Testimony of Will Allen; Protestants' Ex. 6, Testimony of Dr. Cliff Skiles.

<sup>5</sup> Protestants' Ex. 9, Testimony of Mike Thornhill, Attachment MT-17B; Protestants' Exs. 11, 12 (larger scale versions of exhibits to pre-filed testimony of W. Allen).

<sup>6</sup> "Exhibit B" attached hereto is a copy of Attachment MT-4 to the prefiled testimony of geologist Mike Thornhill, Protestants' Ex. 9.

<sup>7</sup> Tr. at 181:8-9.

larger impact on water levels within the Areas than vice versa. Generally, water is flowing *from* the Areas *into* the North Plains GCD, not vice versa.<sup>8</sup>

### **Effective Management through North Plains GCD Regulation**

- For the irrigation that occurs in the Areas, Protestants' survey of irrigators revealed that the amount of water produced is uniformly less than that allowed by North Plains GCD rules. In Area A, the Poole Interests produce an average of 0.77 acre-feet per acre (based on the acreage contiguous to their irrigated area); in Area B, no irrigation is occurring; and, in Area C the average irrigator produces an average of 0.89 acre-feet per acre owned, while Dr. Skiles produces an average of 1.27 acre-feet.<sup>9</sup>
- The North Plains GCD's current regulations allow production of 2 acre-feet per acre in Dallam County for acreage owned (or pooled). This amount will be reduced in 2012 to 1.5 acre-feet per acre. Production at these levels is based on the "desired future condition" that has been established by the North Plains GCD.<sup>10</sup>
- Thus, imposition of the North Plains GCD's regulations on the Areas *will not* result in less groundwater production in the Areas and *will not* do anything to modify or more effectively manage groundwater resources in the Areas.<sup>11</sup>
- Natural constraints, such as terrain, soil quality, and geohydrologic conditions, combined with the economic realities of the cost of drilling additional wells and the agricultural market ensure that groundwater development in the Areas will remain limited, even without GCD regulation.<sup>12</sup>

### **III. POLICY ISSUE REGARDING PRE-2001 PGMAS**

The fundamental public policy issue presented by this case is whether the TCEQ mandates GCD regulation of groundwater production and property rights in groundwater simply

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<sup>8</sup> Protestants' Ex. 9, Testimony of Mike Thornhill; Tr. 187:9-22, 191:7-193.3.

<sup>9</sup> Protestants' Ex. 8, Testimony of Sabrina Leven.

<sup>10</sup> North Plains GCD's Ex. C, Rule 4.1; *see also* Desired Future Conditions for GMA-1, found at TWDB website at [http://www.twdb.state.tx.us/GWRD/GMA/DFC/GMA1\\_Adopted\\_2009-07-07.pdf](http://www.twdb.state.tx.us/GWRD/GMA/DFC/GMA1_Adopted_2009-07-07.pdf)

<sup>11</sup> Protestants' Ex. 9, Testimony of Mike Thornhill; Protestants' Ex. 6, Testimony of Dr. Cliff Skiles; Protestants' Ex. 7, Testimony of Danny Poole.

<sup>12</sup> Protestants' Ex. 9, Testimony of Mike Thornhill, at 24:7-18, 25:8-21; Protestants' Ex. 6, Testimony of Dr. Cliff Skiles, at 7:12-8:7; Protestants' Ex. 7, Testimony of Danny Poole, at 8:1-14, 8:21-23; Protestants' Ex. 10, Testimony of Will Allen, at 3:2-15.

because it can, regardless of need for, or effectiveness of, such regulation. Protestants submit that the answer to this question should be “No.”

The Critical Area (now “PGMA”) statutes are aimed at addressing special circumstances (“critical groundwater problems”)<sup>13</sup> already occurring or expected to occur in the foreseeable future in carefully targeted areas, sufficient to justify even GCD creation and regulation against the will of landowners.<sup>14</sup> Unless the Commission is determined simply to rely on its twenty-year-old analysis and delineation of the Dallam County PGMA – without regard for current groundwater conditions (and future projections) in the remaining Areas or whether the North Plains GCD’s regulatory regime would effectively address a PGMA-type groundwater problem in these Areas – a clear path exists, legally and factually, to allow Areas A, B and C to continue without regulation by the North Plains GCD (or a newly formed GCD).

Legally, TCEQ Rule 239.19(b)(6)(A) requires that the GCD (to be created or) to which the remaining PGMA area is proposed to be added be able to “effectively manage” groundwater resources in the PGMA. TCEQ promulgated Rule 293.19(b) in 2002, as part of one of its rulemaking packages following PGMA-related Water Code amendments in SB 1 and SB 2, to provide for an evidentiary hearing and record supporting the “district creation action” for pre-2001 PGMA’s.<sup>15</sup> In fact, however, the amended statutory provisions of Chapter 35 of the Water Code nowhere address (whether or) how the Commission should proceed with the unique case of pre-2001 PGMA’s that had long ago been designated by rulemaking. Rule 293.19(b) was

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<sup>13</sup> See TEX. WATER CODE §35.007(a).

<sup>14</sup> Cf. TEX. WATER CODE §35.012(b); §35.013(h)–(i); §36.0151..

<sup>15</sup> See 27 Tex. Reg. 3939-53, *adopted* 27 Tex. Reg. 7942-53 (2002).



developed by TCEQ in order to fill a statutory gap.<sup>16</sup> Consistent with the underlying purpose of the PGMA statutes, discussed above, Rule 293.19(b)(6)(A) should be construed to evaluate whether the ED's district action recommendation will (or at least has a good chance to) actually accomplish the purpose of addressing a PGMA-type groundwater problem.<sup>17</sup>

Factually, the ED's recommendation in this case does not achieve effective management. As the record evidence in this case shows, the North Plains GCD's regulatory program of production limitations and well spacing will do nothing to address or improve groundwater conditions or groundwater management in the three Dallam County Areas. As discussed above, there is less (and less dense) development, fewer non-exempt wells, and less groundwater production in Areas A and C than in surrounding parts of Dallam County within the District, and pumping within the District has more potential effect on groundwater resources within the Areas than vice versa. Due to the localized hydrology of the Ogallala Aquifer and landowner practices driven by natural and economic constraints, current conditions and modeled future projections both show that the groundwater resources in the Areas will be better sustained over time than the groundwater resources already regulated by the North Plains GCD.<sup>18</sup>

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<sup>16</sup> See Tr. 38:4-6, 39:15-21 (cross-examination of K. Mills); Protestants' Ex. 2 (memo of Oct. 28, 2008 to B. McMath, at 3); Protestants' Ex. 3 (TCEQ/TWDB, *Priority Groundwater Management Areas and Groundwater Conservation Districts, Report to the 78<sup>th</sup> Texas Legislature* (Jan. 2003), at 23, 76).

<sup>17</sup> Both in the current statute and in the prior version effective at the time of the Dallam County PGMA designation, "critical groundwater problems" are defined as "shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies." TEX. WATER CODE § 35.007(a); see also Acts 1985, 69<sup>th</sup> Leg., R.S., ch. 133, §5.01 (codified at Tex. Water Code § 52.053(a)). So far as Protestants are aware, the only one of these types of problems that has ever been addressed as a concern in the Dallam County Study Area is groundwater shortage or availability.

<sup>18</sup> Attached hereto as "Exhibit C" is a copy of Attachment MT-17B to Protestants' Ex. 6, Testimony of Mike Thornhill. It reflects future water availability conditions in Dallam County, based upon application of the TWDB Groundwater Availability Model. It shows, with the exception of Area B (which is dewatered by pumping from within the North Plains GCD), most of the Areas retain groundwater to some extent through 2060, while much of the remainder of the county within North Plains GCD is dewatered.

As a matter of public policy the Commission should construe Rule 293.19(b) proceedings to include a realistic consideration of groundwater conditions in the subject area. Where, as in this case, most of the land within the originally designated PGMA has already been added to a groundwater district,<sup>19</sup> these proceedings beg the question of whether groundwater conditions in the remaining Areas, standing alone decades later, require GCD regulation for effective groundwater management.<sup>20</sup> In short, as a matter of public policy the Commission should include some consideration of *whether* remaining areas of the 1990-designated Dallam County PGMA should be subjected to regulation by a GCD, not just *which* approach (addition to the North Plains GCD vs. creation of one or more new GCDs) is the easiest, cheapest way to wrap up the Dallam County PGMA. In contrast with the ED's and the ALJ's recommendation, this policy determination is more consistent with a) the fundamentally narrow purpose of the PGMA statutes; b) TCEQ's practice, with other PGMA's, of subsequent reexamination of PGMA study areas to determine the appropriateness of further district creation actions; and c) Texas' general

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<sup>19</sup> By an election in May 1993, portions of Dallam County were annexed into the North Plains GCD. By an election (and respective board actions) in November 2004, the land within the previously existing Dallam County Underground Water Conservation District #1 was consolidated into the North Plains GCD. See ED's Ex. A-1 (Report) at 5-6, Fig. 2, App. 1-d. Finally, in June 2007 some additional Dallam County land was added to the North Plains GCD based on a petition by the landowner.

<sup>20</sup> This more case-specific approach, examining the specific GCD regulatory regime that would be applied, is reflected in the Executive Director's recent draft Hill Country PGMA Report. See TCEQ, Groundwater Conservation District Recommendation for Hill Country Priority Groundwater Management Area – Western Comal and Southwestern Travis Counties (Draft, Sept. 2009), available at: [http://www.tceq.state.tx.us/assets/public/permitting/watersupply/groundwater/pgma/2009\\_hill\\_country\\_rpt\\_draft.pdf](http://www.tceq.state.tx.us/assets/public/permitting/watersupply/groundwater/pgma/2009_hill_country_rpt_draft.pdf). Based on the same Rule 293.19(b) governing this case, Executive Director states:

In considering adding territory to an existing GCD, the Executive Director must also evaluate and understand the existing GCD's *specific management authority*, . . . . Other considerations include the likelihood of a GCD accepting a recommendation to add all or part of the PGMA; past GCD creation actions in a recommended area; and potential election costs.

*Id.* at 13 (emphasis added).

approach to locally targeted examination of the need for groundwater management by GCD regulation.<sup>21</sup>

#### **IV. PROTESTANTS' EXCEPTIONS TO THE ALJ'S PROPOSAL FOR DECISION**

Based on the foregoing factual background and argument, Protestants hereby raise the following specific exceptions to the ALJ's proposed Order for the Commission's consideration:

##### **A. Findings of Fact**

1. If considerations of the need for GCD regulation in the Dallam County Areas, and the benefit to such Areas by GCD regulation, are irrelevant, as the ALJ has concluded with regard to Protestants' evidence (PFD at 2), then the ALJ's proposed Findings of Fact Nos. 11-15 should be deleted as irrelevant.

2. Alternatively, if such findings on issues of need and benefit are relevant to this proceeding under TCEQ Rule 293.19(b), then Protestants' evidence on these issues should also be considered by the Commission. (*See* Ex. A, Protestants' Draft Order, Findings of Fact Nos. 9-26).

3. The ALJ's proposed Finding of Fact No. 29, which is apparently based only on an unsupported, conclusory statement in the ED's Report (*See* ED's Ex. A-1, at 11), should be deleted.

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<sup>21</sup> This policy consideration, rejecting gratuitous regulation apparently simply for the sake of the Commission finishing what it had started by a 1990 rulemaking, is all the more important in the context of the Dallam County PGMA, where the historical and present record show that landowners in the remaining unregulated Areas do not support inclusion of their land within the North Plains GCD. "Exhibit D," attached hereto and incorporated herein, is a copy of a petition signed by the vast majority of the Dallam County registered voters residing in Area C (and documentation regarding the compilation of the list of such registered voters), indicating that they are opposed to the ED's recommendation and intend to vote against including Area C in the North Plains GCD. It was excluded from the evidentiary record by the ALJ as irrelevant, and is the subject of Protestants' offer of proof. Tr. at 173-74. The same petition and supporting documentation is being submitted to the Commission as public comment in this docket.

## **B. Conclusions of Law**

1. As set forth above, as a matter of public policy, the Commission should reject the ED's and the ALJ's construction of TCEQ Rule 293.19(b), and instead adopt Protestants' construction of the "effective management" consideration in § 293.19(b)(6)(A), as set out in Protestants' Draft Order (Ex. A), Conclusions of Law Nos. 8-11.

2. Based on the foregoing construction of § 293.19(b)(6)(A) governing this proceeding, the ALJ's proposed Conclusion of Law Nos. 11 (regarding GCDs generally as being "the best management tool for the PGMA") and 13 (regarding the North Plains GCD's ability to effectively manage groundwater resources in the Areas) should be deleted as lacking in any factual basis.

3. Based on the foregoing construction of § 293.19(b)(6)(A) governing this proceeding, the Commission should further conclude that the Executive Director has failed to meet his burden of proof in support of his recommendation. (*See* Ex. A, Protestants' Draft Order, Conclusion of Law No. 13).

## **C. Ordering Provisions**

1. Based on Protestants' rule construction and factual background set out above, the Commission should reject the ALJ's proposed Ordering Provision No. 1 and instead adopt Protestants' form of order set out in "Exhibit A" attached hereto and incorporated herein.

2. Alternatively, if the Commission decides to accept the PFD and the ALJ's proposed Order, based on the statutory steps outlined in Water Code § 35.008 and §§ 35.012-.014 and summarized by the ALJ (PFD at 1-2) the ALJ's Ordering Provision No. 1 should be amended to read as follows: "The Commission recommends that Areas A, B and C within the

Dallam County PGMA be added to the North Plains Groundwater Conservation District, and directs that said District call and hold an election within each of these Areas pursuant to the provisions of Texas Water Code § 35.013.”<sup>22</sup>

## V. CONCLUSION

Based on the arguments and authorities set forth herein, and on the evidentiary record Protestants have established in these proceedings, Protestants request that the Commission: a) reject the ALJ’s Proposal for Decision and Order; b) construe TCEQ Rule 293.19(b)(6)(A) to require assessment of “effective management” in terms of the established and projected groundwater conditions in Dallam County Areas A, B, and C and the potential for the North Plains GCD’s regulatory program to alleviate PGMA-type “critical groundwater problems,” if any, in those Areas; and c) adopt Protestants’ proposed form of Order attached hereto.

Respectfully submitted,

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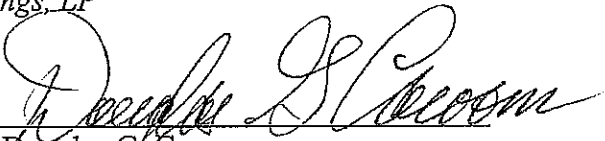
*Attorneys for Clifford A. Skiles, Jr., DVM and for  
Poole Leasing Co., Inc. and Entrania Springs, LP*

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<sup>22</sup> Because the North Plains GCD’s Board has already unanimously taken the (Water Code §35.013(b)) step of approving such a TCEQ recommendation, Protestants assume that the TCEQ could move directly to ordering the District to hold the required election. See North Plains GCD’s Ex. A (S. Walthour Test.), Ex. 1 (minutes of the Apr. 6, 2009 Board meeting of North Plains GCD).

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*Attorneys for Poole Leasing Co., Inc. and Entrania  
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By:   
Douglas G. Caroom

## CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2010, a true and correct copy of the foregoing Protestants' Exceptions to the Administrative Law Judge's Proposal for Decision was filed with the TCEQ Chief Clerk, and sent by first class mail and/or facsimile to the following persons:

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Eliot Crabtree



Douglas G. Caroom

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## ORDER

AN ORDER Regarding the Executive Director's District Creation  
Recommendation for Priority Groundwater Management Area  
in Dallam County, TCEQ DOCKET NO. 2008-1940-WR;  
SOAH DOCKET NO. 582-09-2350

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Groundwater Conservation District Recommendation for the Dallam County Priority Groundwater Management Area (ED's Report), and the Executive Director's (ED) recommendation that three non-contiguous areas within the Dallam County Priority Groundwater Management Area (Dallam County PGMA) be added to the North Plains Groundwater Conservation District (NPGCD). The Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), presented a Proposal for Decision (PFD) that recommended that the Commission approve the ED's recommendation. After considering the ALJ's PFD, and exceptions and replies filed thereto, the Commission adopts the following Findings of Fact and Conclusions of Law:

## FINDINGS OF FACT

### Procedural History

1. In 1990, all of Dallam County except for that portion then within the boundaries of the Dallam County Underground Water Conservation District No. 1 was designated through rulemaking by the Texas Water Commission as a Critical Area, based on a Critical Area Study prepared in conjunction with the Texas Water Development Board (TWDB). The study found significant reductions in the saturated thickness of the Ogallala aquifer and concluded that Dallam County was expected to experience critical groundwater problems over the next two decades. The term "Critical Area" was changed to "Priority Groundwater Management Area" (PGMA) by legislation (SB 1) enacted in 1997.
2. On December 9, 2008, the TCEQ Executive Director (ED) approved and issued the ED's Report recommending that the Commission recommend that the three remaining non-contiguous areas within the Dallam County PGMA, that are not

currently in a groundwater conservation district (GCD), be added to the North Plains Groundwater Conservation District (NPGCD).

3. By letter dated January 23, 2009, the Commission referred the matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.
4. Notice of the hearing on the ED's Report was mailed on February 3, 2009.
5. Notice of the hearing was published in the *Dalhart Texas* newspaper on Monday, February 16, 2009.
6. The ALJ conducted a preliminary hearing and took jurisdiction of this matter on March 17, 2009, in Dalhart, Texas.
7. The evidentiary hearing on the merits was held August 26, 2009, in Dalhart, Texas.
8. At the evidentiary hearing, parties were allowed to present evidence and cross examine the witnesses. Several unrepresented parties filed position statements in this docket, but did not present evidence. The parties filed post-hearing briefs, and the administrative record closed with the filing of the ED's surreply brief on November 17, 2009.

#### **Unregulated Areas Within the Dallam County PGMA**

9. Since the designation of the Dallam County PGMA in 1990, most of Dallam County has been added to the NPGCD through a series of different actions by landowners and districts. Most recently, by an election (and respective board actions) in November 2004, the land within the previously existing Dallam County Underground Water Conservation District No. 1 was consolidated into the NPGCD.
10. Of the 1,505 square miles of land in Dallam County, 1,075 are within the current boundaries of the NPGCD, leaving 430 acres (about 28% of the land in the county, comprised of the Areas designated as A, B, and C in the ED's Report (the Areas)) not subject to groundwater management by GCD regulation.

11. Except to the extent that these Areas border the state line boundaries with Oklahoma and New Mexico, Areas A, B, and C are each contiguous to, and surrounded by, land currently within the jurisdiction of the NPGCD.
12. Based on the ED's comparative analysis of revenue generation potential (from taxes, production fees, or both) and property locations and boundaries, it would not be feasible and practicable to create one or more new GCDs for the purpose of regulating groundwater resources in the Areas.
13. Previous attempts to include Area C within the NPGCD through the landowner petition or annexation process have ultimately been unsuccessful. The majority of registered voters in Area C have indicated that they will not support inclusion of the Areas in the NPGCD.

#### **Groundwater Pumping and Groundwater Conditions Within the Areas**

14. Neither the TCEQ nor the NPGCD has compiled or developed data regarding water wells, groundwater production, or groundwater conditions within the Areas.
15. Groundwater pumping in Dallam County, which is primarily for agricultural irrigation (center-pivot systems, and their "irrigation circles"), is far less extensive in Areas A and C than on the lands surrounding these two Areas, within the jurisdiction of the NPGCD. There is no such apparent irrigation and groundwater pumping taking place in Area B.
16. As a matter of comparative density, there are fewer (non-exempt) wells in Area C and in Area A than there are in other "in-district" parts of Dallam County.
17. Groundwater production data compiled by and on behalf of Areas A and C landowners and well operators shows significantly less groundwater production in Areas A and C than what is occurring in other parts of Dallam County.

18. Overall, there has been less groundwater development and production in Areas A and C than in other parts of Dallam County, largely due to natural constraints such as the terrain, soil quality, and the ability to drill cost-effective groundwater wells. These constraints virtually ensure that development and groundwater production in these Areas will remain limited.

### **NPGCD Regulation and Groundwater Conditions**

19. The NPGCD encompasses Sherman, Hansford, Ochiltree, and Lipscomb counties, Moore, Hutchinson, and Hartley counties (north of the Canadian River), and Dallam County (except for the Areas).
20. The Ogallala aquifer underlies most of Dallam County, including the Areas A, B, and C, and most of the rest of NPGCD's multi-county jurisdiction.
21. NPGCD is an established groundwater conservation district, with a TWDB-approved groundwater management plan and rules governing production and well spacing limits, required well permitting and registration, and required metering and reporting of groundwater production. NPGCD provides various water quality and other testing services, operates water conservation education programs, and has a well monitoring program. NPGCD's level of ad valorem taxation and other resources and infrastructure would enable it to expand its groundwater management regulatory program and other services to include the Areas.
22. Compiled data representing the majority of acreage and irrigation wells in Areas A and C shows that groundwater production in these Areas, considered on an average per-acre basis, is below the per-acre levels allowed under the NPGCD's management levels. These production averages (.77 af/acre in Area A acreage, and .89 af/acre in Area C) are well below the maximum 2 acre-feet per acre currently allowed under the NPGCD's Rule 3.3(A), and will be well below the reduced amount of 1.5 acre-feet per acre that will be allowed under the District's amended rules, effective January 2012 (NPGCD Rule 3.3(C)).

23. The groundwater reserves located in the unregulated Areas A and C are more plentiful than the groundwater resources in other parts of Dallam County, and have a longer anticipated useful life. Over time, more water remains in storage (saturated thickness) within Areas A, B, and C than in other parts of Dallam County. Due to the transmissivity of the aquifer, even as water levels decline in other areas, Areas A and C remain viable over time. Data (from TCEQ, TWDB, and the NPGCD) on water levels in different parts of Dallam County show that there is less decline in water levels in Areas A and C than in other parts of the county.
24. To the extent that Dallam County has a groundwater availability problem, currently or within the next 25 years, that problem results from groundwater production within the portions of Dallam County (and other counties) already within the NPGCD's boundaries, which has a much larger impact on the water table than pumping within the Areas.
25. Not including Areas A, B, and C within the NPGCD's boundaries does not interfere with the District's ability to effectively regulate the groundwater resources within its jurisdiction.
26. Including Dallam County Areas A, B, and C within the boundaries and under the regulatory management program of the NPGCD would not have the effect of addressing a groundwater shortage, land subsidence resulting from groundwater withdrawal, or contamination of groundwater supplies.

## **CONCLUSIONS OF LAW**

### **Jurisdiction and Notice**

1. Texas Water Code (TWC) § 35.008(b)(2) gives the Commission authority to call an evidentiary hearing to consider whether land in a PGMA should be added to an existing GCD.

2. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with Findings of Fact and Conclusions of Law, under Tex. Gov't Code Chapter 2003; TWC § 35.008.
3. SOAH obtained jurisdiction of this matter on January 23, 2009.
4. The ED provided notice of the evidentiary hearing as required by TWC § 35.009 and 30 Texas Administrative Code (TAC) § 293.19(b) (Rule).

### **Hearing**

5. An evidentiary hearing concerning the feasibility and practicability of the ED's Report and recommendation was held in Dallam County, in which the Dallam County PGMA is located, as required by TWC § 35.008(c).
6. The evidentiary hearing concerning the addition of land within the Dallam County PGMA to the NPGCD complied with TWC § 35.008 and Rule 293.19(b).
7. The evidentiary hearing on the ED's Report and recommendation to add the Areas to the NPGCD was conducted in accordance with Water Code Chapter 35 and the Commission's and SOAH's applicable procedural rules.

### **Construction of TCEQ Rule § 293.19(b)**

8. TWC § 35.008(b) requires the TCEQ to determine whether creation of a new GCD, or the addition of land to an existing GCD, is feasible and practicable.
9. Because the Water Code Chapter 35 PGMA statutes do not address the specific case of PGMA's designated by Commission rulemaking based on earlier statutory provisions, TCEQ promulgated Rule 293.19(b) to provide for procedures to develop the evidentiary record supporting the "district creation action" for such "pre-2001" PGMA's.

10. The "feasibility and practicability" determination required under TWC § 35.008(b)(2) is outlined in the provisions of Rule 293.19(b)(6), which defines the three issues to be considered in the evidentiary hearing on the Commission's district creation options.
11. The "effective management" consideration under Rule 293.19(b)(6)(A) requires the ED to establish that the recommended district creation action will address, or is likely to address, one or more critical groundwater problems, as those are defined in TWC § 35.007(a), in the remaining subject areas of the designated PGMA.
12. Rule 293.19(b)(7) requires the ALJ to issue and file with the Commission a proposal for decision stating findings, conclusions, and recommendations.

#### **Groundwater Management for the Dallam County Areas**

13. The Executive Director has not established that his district creation action recommendation regarding Areas A, B, and C of the Dallam County PGMA achieves the Rule 293.19(b)(6)(A) standard of effective management. Specifically, based on groundwater conditions and production in these remaining Areas, in relation to Dallam County as a whole, NPGCD's exercise of its authorities under Water Code Chapter 36 is not likely to address or improve a PGMA-type critical groundwater problem in the Dallam County PGMA.

#### **NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:**

1. The Commission recommends that, because there is no basis to conclude that GCD regulation would accomplish effective management addressing "critical groundwater problems" in Areas A, B, and C of the Dallam County PGMA, no further action be taken with respect to these remaining Areas.
2. All other motions, requests for entry of specific findings of fact or conclusions of law and any other requests for general or specific relief not expressly granted herein are hereby DENIED for want of merit.



3. The effective date of this Order is the date the Order is final as provided by Tex. Gov't Code § 2001.144.
4. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

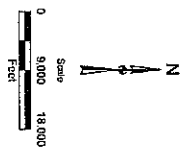
**Issue Date:** \_\_\_\_\_

**TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
**Bryan W. Shaw, Ph.D**  
**Chairman**



**Explanation**  
 Out of District Areas  
 Counties

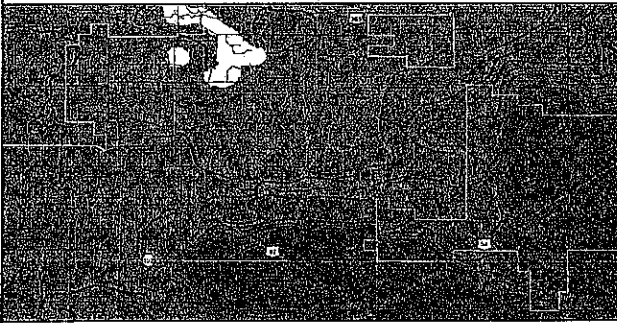


Dallam County PGMA  
 Attachment MT-4.  
 Location Map

**THORNTON GROUP, INC.**  
 Environmental Impact Study for the Proposed Development

Potential Yield

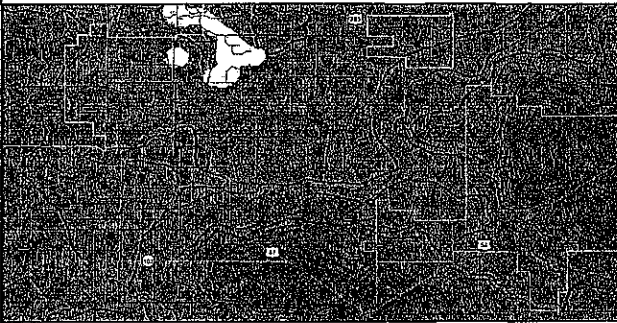
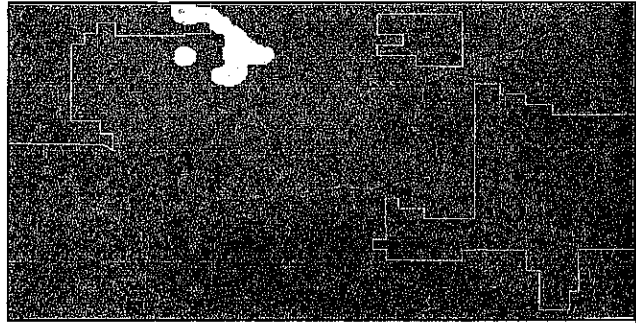
Gallons per Acre



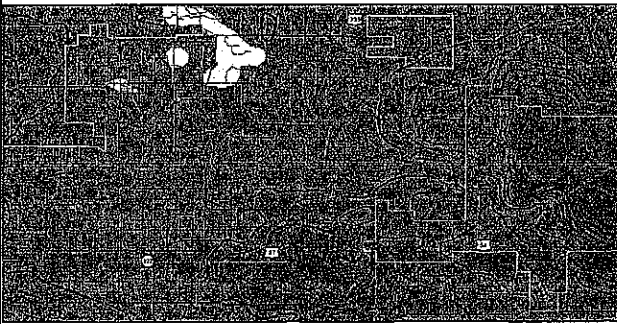
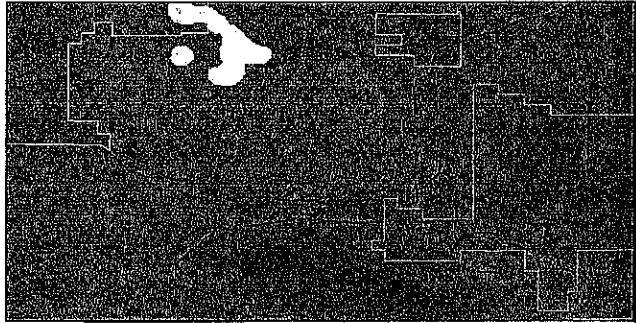
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Estimated Specific Capacity

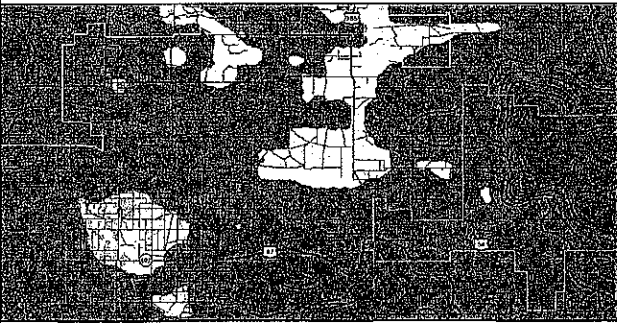
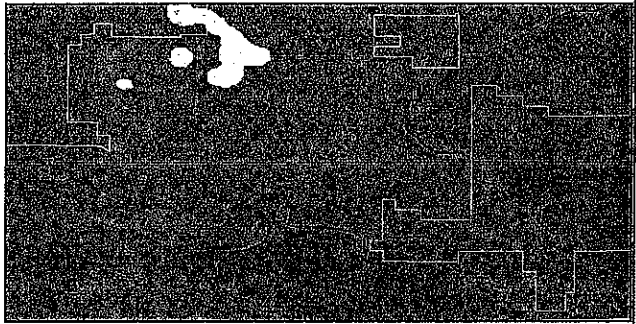
Gallons per Acre per Foot of Drawdown



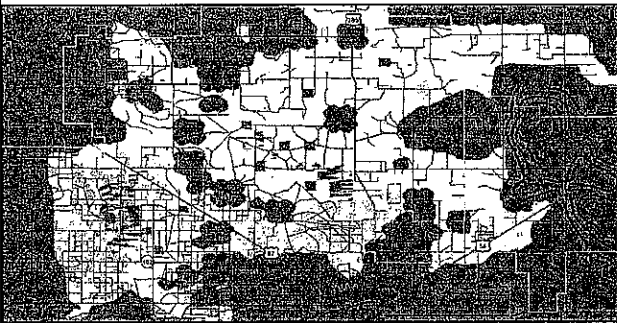
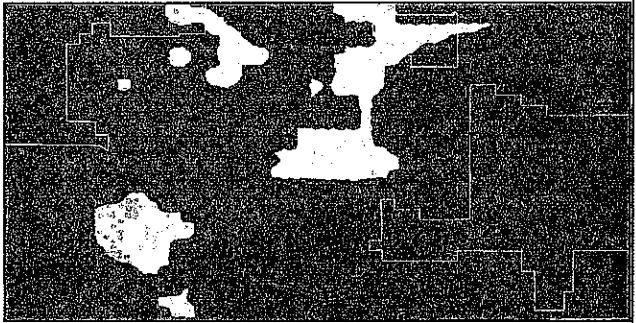
1990



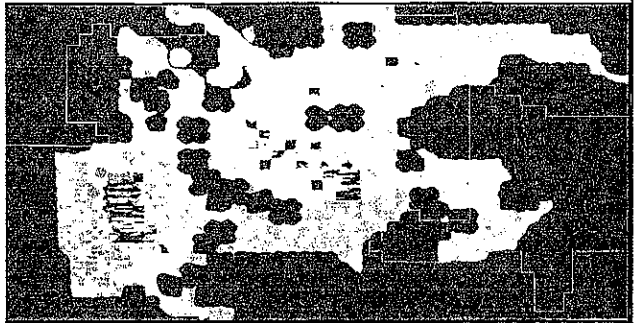
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2030

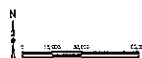


2060



Legend  
 1. County Boundary  
 2. Township Boundary  
 3. Section Boundary  
 4. Water Body  
 5. Road  
 6. Railroad  
 7. Other  
 8. Unlabeled

Area ID  
 A 1.000000  
 B 1.000000  
 C 1.000000  
 D 1.000000  
 E 1.000000  
 F 1.000000  
 G 1.000000  
 H 1.000000  
 I 1.000000  
 J 1.000000  
 K 1.000000  
 L 1.000000  
 M 1.000000  
 N 1.000000  
 O 1.000000  
 P 1.000000  
 Q 1.000000  
 R 1.000000  
 S 1.000000  
 T 1.000000  
 U 1.000000  
 V 1.000000  
 W 1.000000  
 X 1.000000  
 Y 1.000000  
 Z 1.000000



Dallam County PGMA  
 Attachment MT-17B  
 Revised: 11/20/2010



Exhibit C

STATE OF TEXAS

COUNTY OF DALLAM

**PETITION**  
**TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

To the Honorable Commissioners of the Texas Commission on Environmental Quality:

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) is considering the Executive Director's recommendation and request that three areas of Dallam County be added to the North Plains Groundwater Conservation District (NPGCD);

WHEREAS, one of these three areas, designated "Area C" and located in Eastern Dallam County, has previously held an election and rejected the opportunity to become part of a groundwater conservation district;

WHEREAS, numerous property owners in Area C have participated in TCEQ hearings to oppose the Executive Director's pending recommendation;

WHEREAS, there are sixty-five registered voters in Area C according to Dallam County's list of registered voters in 2009 (map and listing attached); and,

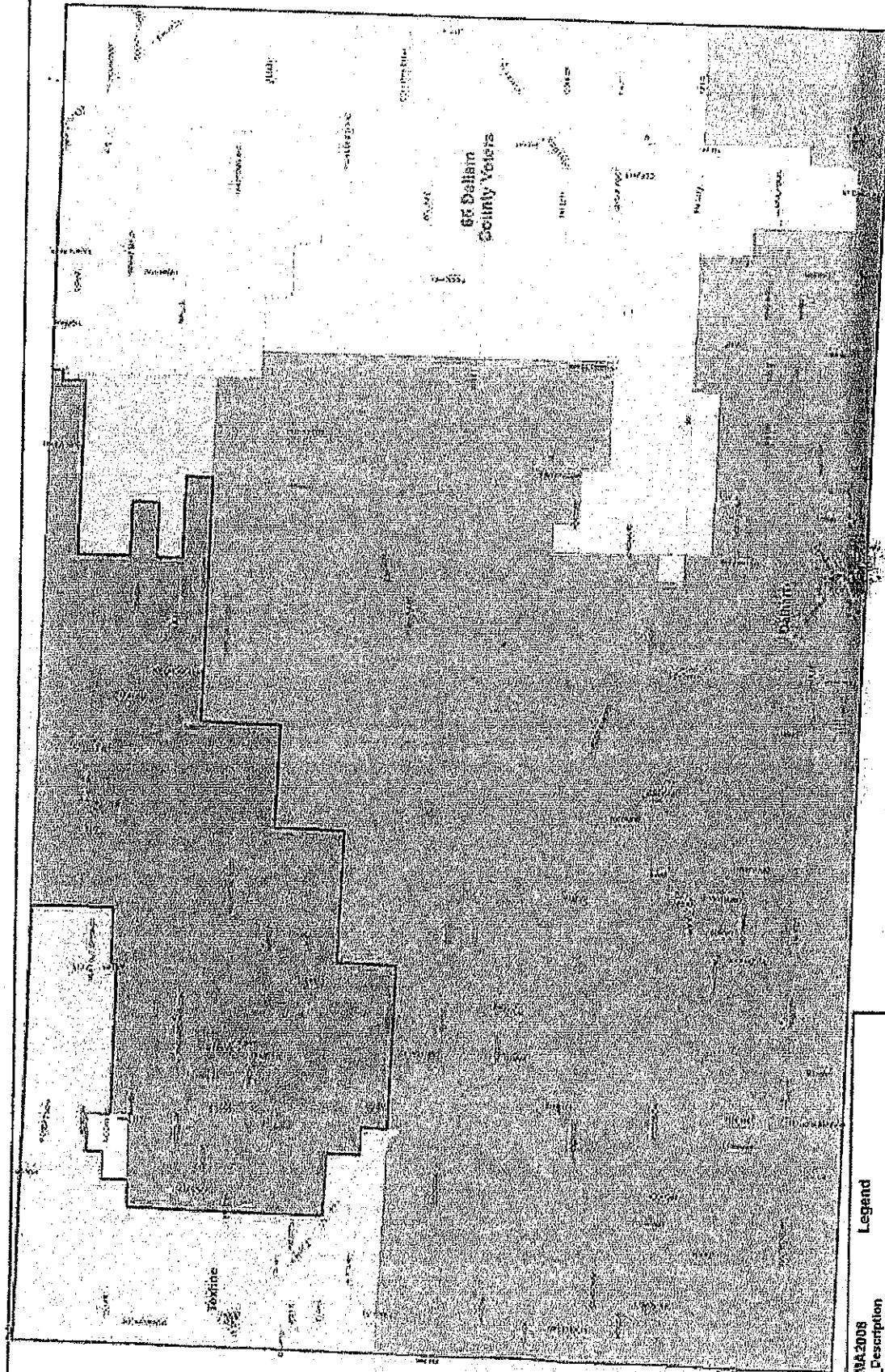
WHEREAS, it would be a needless expense and futile exercise to hold an election on inclusion of Area C in the NPGCD if a majority of the registered voters in Area C stated their opposition to inclusion in the NPGCD;

NOW, THEREFORE, the undersigned registered voters in Area C of the Dallam County Priority Groundwater Management Area state the following and petition the Commissioners to reject the Executive Director's recommendation:

1. I am a registered voter in Area C of the Dallam County Priority Groundwater Management Area.
2. I can see no benefit to inclusion of Area C in the NPGCD. Groundwater pumping and use in Area C is already less than pumping and groundwater use in areas of Dallam County that are in the NPGCD.
3. The only result of inclusion of Area C in the NPGCD would be the imposition of unnecessary taxes and regulation, to which I am opposed.
4. I am opposed to addition of Area C to the NPGCD and would vote against it if an election were held on the issue.

RESPECTFULLY SUBMITTED:





**Dallam PGMA 2008**  
**As of 2008 Description**

	Antitoxin to former Dallam UWCD
	Former Dallam UWCD1 as in 1980
	PGMA area without any GCD Jurisd
	PGMA region since as desig
	PGMA without GCD Jurisdiction
	Region from former D. UWCD

**Legend**

	Dallam County 2009 Registered Voters
	Dallam County Roads
	PGMA 08

**Dallam County**  
**April 2009 Dallam County Registered Voters**  
**with Dallam County Groundwater Areas**

Prepared By: Bickelstaff Health Delgado Acosta LLP  
Data Sources:  
2009 Dallam County Registered Voters obtained from Dallam County  
Tax Assessor Collector/Voter Registrar's Office.  
Roads and Highways obtained from the Panhandle Regional  
Planning Council, 911 Emergency Services Department.  
All Dallam County PGMA boundaries obtained from  
Groundwater Planning & Assessment Team  
Water Supply Division, Texas Commission on Environmental Quality.  
All data current as of April 28, 2009. Map created April 28, 2009.

PREC	VOID	Last Name	First Name	Middle Name	Former Last Name	Suffix	Gender	DOB	ADDRESS	House Number	Street Name	Type	City	Zip	Mailing Address	City	State	Zip	Estimated Date of Registration
3	100617055	KAUDEL	PAUL	L			M	19391001	4610 US HWY 54	4610	US HWY 54		DALLAM COUNTY	79084	PO BOX 1161	DALLAM COUNTY	TX	79084	20021205
2	100614444	CASTELLON	PATRICIA				F	19600412	13361 FM 807	13361	FM 807		DALLAM COUNTY	79022	PO BOX 345	STRAITFORD	TX	79084	20091006
2	100950979	KNIGHT	KENNETH	LEE			M	19401219	112125 FM 807	13125	FM 807		DALLAM COUNTY	79022	13125 FM 807	DALLAM COUNTY	TX	79022	19760331
2	100950737	MOORE	EARLENE	PAYE	PLANK		F	19361110	4300 SUMMEROUR LN	4300	SUMMEROUR LN		DALLAM COUNTY	79022	4300 SUMMEROUR LN	DALLAM COUNTY	TX	79022	19760331
7	100950726	MOORE	PATRICIA	ARR-HARD	PALMER		F	19471211	12857 US HWY 385	12857	US HWY 385		DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19760331
7	100950738	MOORE	EDWARD	RICH-HARD	MOORE		M	19471008	12857 US HWY 385	12857	US HWY 385		DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19760331
5	100950748	GABLER	DAISY	LAVARN			F	19240126	12864 US HWY 385	12864	US HWY 385		DALLAM COUNTY	79022	12864 US HWY 385	DALLAM COUNTY	TX	79022	19760331
2	100950781	RICKETSON	ALLAN	NEIL			M	19451111	4410 FM 3212	4410	FM 3212		DALLAM COUNTY	79022	4410 FM 3212	DALLAM COUNTY	TX	79022	19760331
2	100950786	ROBERTS	JAMES	THOMAS			M	19530106	72605 FM 807	72605	FM 807		DALLAM COUNTY	79022	12861 FM 807	DALLAM COUNTY	TX	79022	19760331
2	100950787	HOKINE	ELAINE		CRABTREE		F	19411218	4624 US HWY 54	4624	US HWY 54		DALLAM COUNTY	79022	12861 FM 807	DALLAM COUNTY	TX	79022	19760331
2	100950818	BORTH	HERMAN	ALBERT			M	19450215	4353 FM 3212	4353	FM 3212		DALLAM COUNTY	79022	4353 FM 3212	DALLAM COUNTY	TX	79022	19760331
2	100950819	BORTH	KERRY	LYN	CRAM		F	19431110	4353 FM 3212	4353	FM 3212		DALLAM COUNTY	79022	4353 FM 3212	DALLAM COUNTY	TX	79022	19760331
2	100950825	SUMMEROUR	EDWARD	BARRY			M	19390613	4428 SUMMEROUR LN	4428	SUMMEROUR LN		DALLAM COUNTY	79022	4428 SUMMEROUR LN	DALLAM COUNTY	TX	79022	19760331
2	100950827	SUMMEROUR	MARY	NEIL			F	19405230	4428 SUMMEROUR LN	4428	SUMMEROUR LN		DALLAM COUNTY	79022	4428 SUMMEROUR LN	DALLAM COUNTY	TX	79022	19760331
2	100950828	SUMMEROUR	JAMES	ELMER	COUGH		M	19301027	4434 FM 3212	4434	FM 3212		DALLAM COUNTY	79022	4434 FM 3212	DALLAM COUNTY	TX	79022	19760331
2	100950830	SUMMEROUR	HELEN	MAXINE	CLUCK	LR	F	19320518	4434 FM 3212	4434	FM 3212		DALLAM COUNTY	79022	4434 FM 3212	DALLAM COUNTY	TX	79022	19760331
2	100950831	SUMMEROUR	JOHNNY	FLOYD			M	19341201	4436 FM 3212	4436	FM 3212		DALLAM COUNTY	79022	4436 FM 3212	DALLAM COUNTY	TX	79022	19760331
6	100950832	SUTTERBELL	CHARLES		HARDING		M	19360518	4436 FM 3212	4436	FM 3212		DALLAM COUNTY	79022	4436 FM 3212	DALLAM COUNTY	TX	79022	19760331
6	100950833	SUTTERBELL	LOLA				F	19360518	4436 FM 3212	4436	FM 3212		DALLAM COUNTY	79022	4436 FM 3212	DALLAM COUNTY	TX	79022	19760331
2	100950834	SUTTERBELL	JOE		WILLIAMSON		M	19360518	4436 FM 3212	4436	FM 3212		DALLAM COUNTY	79022	4436 FM 3212	DALLAM COUNTY	TX	79022	19760331
2	100950835	ROBERTS	BELOINDA	SHARON			F	19360518	4436 FM 3212	4436	FM 3212		DALLAM COUNTY	79022	4436 FM 3212	DALLAM COUNTY	TX	79022	19760331
5	100950836	WILLARD	JESSE	ELDON			M	19551101	12986 FM 807	12986	FM 807		DALLAM COUNTY	79022	12986 FM 807	DALLAM COUNTY			

NAMEADDRESS

Mable Heisbell	4001 Hwy 54 79022
Jan Heisbell	4001 Hwy 54 79022
Lyman Heisbell	Box 45 D. W. W. 79022
Jane Elda Will	14053 FM 807 Dalhart, TX 79022
Mother Anna Willard	14053 FM 807 Dalhart, TX 79022
Julie Kathleen Willard	4399 Willard Ln Dalhart TX 79022
Kathy Lynn Willard	4397 Willard Ln. Dalhart, TX 79022
Judy Willard	4399 Willard Ln. Dalhart, TX 79022
Jimmy Summerow	4434 FM 3212 Dalhart TX 79022
Wileen Summerow	4434 FM 3212 Dalhart TX 79022
John Summerow	4438 FM 3212 Dalhart TX 79022
Lois Wynne Summerow	4438 FM 3212
Will Summerow	4428 Summerow Ln Dalhart, TX
E.B. Summerow	4428 Summerow Ln Dalhart, TX
Earleen F. Moore	4300 Summerow Lane
Edward R. Moore	12857 US 385 Dalhart, TX
Larry Moore	12850 US 385 Dalhart, TX
Beverly K. Haysner	12850 U.S. 385 Dalhart, TX
Daisy Lavern Moore Gable	12864 U.S. Hwy. 385, Dalhart, TX
Ernest J. Gable	12864 U.S. Hwy. 385, Dal., TX
Pat Moore	12857 Hwy. 385
Loraine Palmer	12857 Hwy. 385

NAME

## ADDRESS

Kennan D Borth	4353 FM 3212, Dalhart, TX 79022
Kerry Borth	4353 FM 3212, Dalhart, TX 79022
Maude Borth	4353 FM 3212, Dalhart, TX 79022
Shawne Lyn Borth	4353 FM 3212, Dalhart, TX 79022
Jed Zeman	4921 FM 2899 STRATFORD, TX 79084
Dede Zeman	4921 Fm 2899 Stratford, TX 79084
Aaron Vardenman	12904 F.M. 807 Dalhart, TX 79022
Wendy Vardenman	12904 FM 807 Dalhart TX 79022
Andy Don McE	B 4896 US 54 Stratford, TX 79084
Kimberly Lynn McCracken	4896 US 54 Stratford TX 79084



NAME

**ADDRESS**

[illegible]

NAME

Denna L. Vardeman

~~9/5/88~~

ADDRESS

12904 FM 807 Dallas, TX 75242

13125 FM 807 DALLAM T9022

13125 FM 807 DALLAM T9022

SOAH DOCKET NO. 582-09-2350  
TCEQ DOCKET NO. 2008-1940-WR

CREATION OF A GROUNDWATER	§	BEFORE THE STATE OFFICE
CONSERVATION DISTRICT FOR	§	OF
PRIORITY GROUNDWATER	§	ADMINISTRATIVE HEARINGS
MANAGEMENT AREA IN DALLAM	§	
COUNTY		

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AFFIDAVIT OF SHERRY MCCALL

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State of Texas           §  
                                  §  
County of Dallas       §

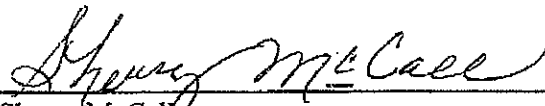
On this day personally appeared before me, the undersigned notary public, **Sherry McCall** who upon being sworn, on her oath, deposed and testified as follows, to-wit:

1. My name is Sherry McCall. I am over the age of eighteen, of sound mind, have never been convicted of a felony, and am competent to make this Affidavit.
2. All of the statements contained herein are true and correct based upon my personal knowledge. This Affidavit is made under penalty of perjury.
3. Since 1997 I have been employed by the law firm now named Bickerstaff Heath Delgado Acosta LLP ("Law Firm"), where I am the senior election and redistricting specialist. As an employee with the Law Firm, I provide technical support for election and redistricting matters, as well as for water-related matters such as CCN proceedings before the TCEQ. A copy of my resume is attached as Exhibit A to this Affidavit. Prior to my work for the Law Firm, I did similar work for the Texas Education Agency. Basically, I work with computer systems, spreadsheet programs and database software that integrate data from election officials and other sources. Using commercially available spreadsheet and database software, it is possible to take election and voter information provided by the Dallam County Tax Assessor-Collector and present it in tabular form. The information I am presenting in this Affidavit is merely a matter of extracting and presenting voter registration data from the Dallam County Tax Assessor-Collector, and then coding and mapping those voters based on data for Dallam County provided by the Panhandle Regional Planning Commission. The information is essentially a mathematical exercise that

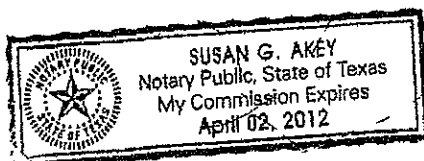
can be easily replicated from the information referenced in this Affidavit. It is a matter of formality and, I believe, uncontested.

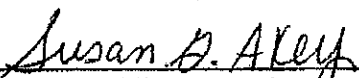
4. I prepared the map attached as Exhibit B to this Affidavit as supporting documentation for the prefiled direct testimony of Dr. Cliff A. Skiles, Jr., DVM in the above-styled and numbered case. I created the map by coding the addresses of the Dallam County registered voters to the street centerline file obtained from the Panhandle Regional Planning Commission, Panhandle Regional 9-1-1 Network, Richard G. (Greg) Green, ENP, Program Director. All PGMA-related and groundwater district boundaries shown on Exhibit B were obtained from the Groundwater Planning and Assessment Team, Water Supply Division, TCEQ.
5. I prepared the table attached as Exhibit C to this Affidavit as supporting documentation for the prefiled direct testimony of Dr. Cliff A. Skiles, Jr., DVM in the above-styled and numbered case. All of the information depicted in Exhibit C was derived from data provided to me by the Dallam County Tax Assessor-Collector, Kay Howell, whose office is also the Voter Registrar's Office for Dallam County. This data was current as of April 2009.
6. The map depicted in Exhibit B shows the locations of the registered voters in Dallam County, based on the address information provided by the Dallam County Tax Assessor-Collector, as described above. Each red dot on the map represents the address of one or more registered voters. Exhibit B is also color-coded to show the various areas of Dallam County in reference to their past and/or present inclusion within a groundwater conservation district. The tan-shaded area on Exhibit B, in the eastern portion of Dallam County, corresponds to "Area C" that is part of the subject of this proceeding.
7. The table depicted in Exhibit C lists all of the registered voters in Dallam County whose addresses are located within "Area C," corresponding to the locations of those voters depicted in Exhibit B. The table includes name, address, and other identifying information for each of these registered voters. Based on the address data provided by the Dallam County Tax Assessor-Collector, as located on the Dallam County map, there are a total of 65 registered voters in Area C of Dallam County.

Further, Affiant says not:

  
Sherry McCall

SUBSCRIBED AND SWORN TO before me, the undersigned notary public, on this the 10<sup>th</sup> day of July 2009 by Sherry McCall, to which witness my hand and seal of office.



  
Notary Public, State of Texas

**Exhibit A**

## Sherry McCall\*

smccall@bickerstaff.com

### ★ Biography

Ms. McCall is the firm's senior redistricting specialist. She was formerly a GIS specialist at the Texas Education Agency. Ms. McCall develops specific client districting plans, assists attorneys in analyzing population, citizenship, projections, voter registration and Spanish Surname data. She reviews relevant historical elections and develops exhibits needed for preclearance submissions and litigation. She works closely with experts in litigation cases.

### ★ Area of Emphasis

**Redistricting** - Responsible for redistricting functions including operation of mapping in conjunction with Census Bureau data/TIGER Line files to create districting plans that comply with federal statute. Analyze population data, chart formation and development of exhibits. Review, input and geocode voter registration data. Use of all Census Bureau datasets for analyzing population and demographics.

**Water Law** - Responsible for obtaining electronic mapping coverages to and from local, state and federal agencies. Preparation of CCN maps using various base map data, coordinate data and state coverages to complete all maps required for the submission of an application to TCEQ. Serves as a liaison with TCEQ mapping division to resolve any issues regarding CCN applications.

**Real Estate Law** - Preparation of maps using county appraisal data including review of sites for development. Correlate mapping data from various entities. Use of appraisal district data files and mapping coverages to analyze growth.

### ★ Experience

15 years of experience with ESRI mapping software and products including extensive work with database files and geodatabases.

Experience with all state mapping data to include aerial photography (DOQs), TxDOT Urban files, StratMap, CCN and DRGs.

Experience using USGS maps as base maps for delineating service area requests.

Experience creating maintaining databases in Access to facilitate the development of attribute tables associated with electronic mapping coverages.

### ★ Educational Background

University of North Texas, B.A., Biology (1991)

\*Not licensed to practice law.

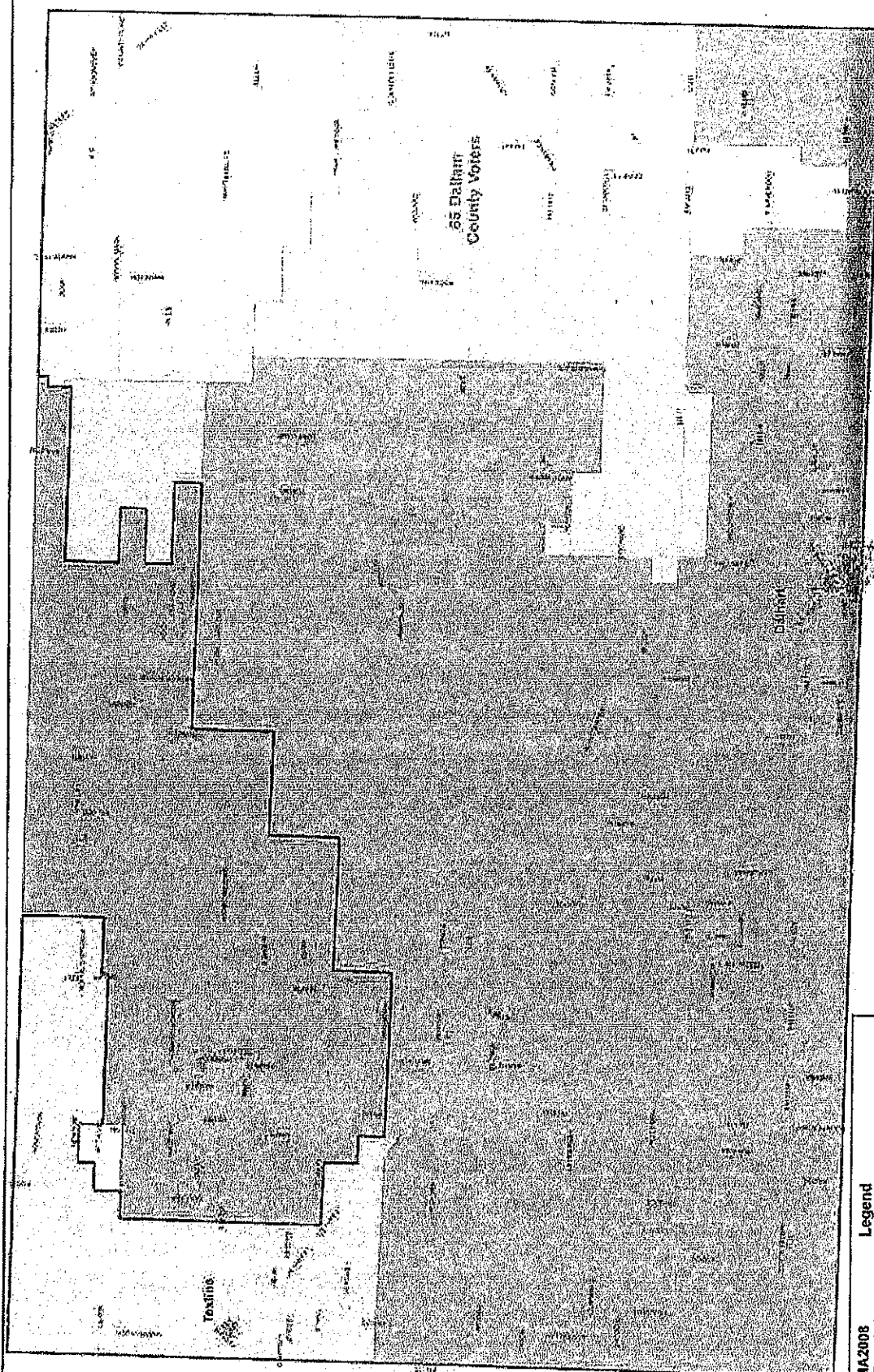
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#### Bickerstaff Heath Delgado Acosta LLP

816 Congress Avenue Suite 1700 Austin, Texas 78701 (512) 472-8021 (800) 749-6646

**Exhibit B**





**DallamPGMA2008**  
**Asamt2008\_Description**

- Legend**
- Annexed to former Dallam UWCD
  - Former Dallam UWCD1 as in 1990
  - PGMA area without any GCD Jurisd
  - PGMA region since its desig
  - PGMA without GCD Jurisdiction
  - Region from former D. UWCD
  - Dallam County 2009 Registered Voters
  - Dallam County Roads
  - PGMA08

**Dallam County**  
**April 2009 Dallam County Registered Voters**  
**with Dallam County Groundwater Areas**

Prepared By: Bickerstaff Health Delgado Acosta LLP  
Data Sources:  
2008 Dallam County Registered Voters obtained from Dallam County  
Tax Assessor Collector/Voter Registrar's Office.  
Roads and Highways obtained from the Panhandle Regional  
Planning Council, 911 Emergency Services Department.  
All Dallam County PGMA boundaries obtained from  
Groundwater Planning & Assessment Team  
Water Supply Division, Texas Commission on Environmental Quality.  
All data current as of April 28, 2009/ Map created April 28, 2009



**Exhibit C**

**Dallam County 2009 Registered Voters Located in PGMA Without Jurisdiction**

PREC	UID	Last Name	First Name	Middle Name	Former Last Name	Suffix	Gender	DOB	ADDRESS	Homes Number	Street Name	Type	City	Zip	Mailing Address	City	State	Zip	Estimated Date of Registration
1	100557065	ADDISSELL	PAUL	L			M	19391008	4610 US HWY 54	4150	US HWY 54		DALLAM COUNTY	79004	PO BOX 1101	DALLAM COUNTY	TX	79004	20021008
2	100514414	CASTELLON	PATRICIA				F	13361012	13361 FM 807	13361	FM 807		DALLAM COUNTY	79002	PO BOX 346	DALLAM COUNTY	TX	79002	20061008
3	100506798	KNIGHT	KENNETH				M	19401210	13125 FM 807	13125	FM 807		DALLAM COUNTY	79022	13125 FM 807	DALLAM COUNTY	TX	79022	19760331
4	100507172	MOORE	CARLEEN				F	19381110	4300 SUMMEROUR LN	4300	SUMMEROUR LN	LN	DALLAM COUNTY	79022	4300 SUMMEROUR LN	DALLAM COUNTY	TX	79022	19760331
5	100507186	MOORE	PATRICIA	ANN			F	18471231	12857 US HWY 385	12857	US HWY 385		DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19760331
6	100507393	MOORE	EDWARD				M	19471008	12857 US HWY 385	12857	US HWY 385		DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19760331
7	100507403	GABLER	DAISY				F	19471025	12864 US HWY 385	12864	US HWY 385		DALLAM COUNTY	79022	12864 US HWY 385	DALLAM COUNTY	TX	79022	19760331
8	100507416	RICKETSON	JAMES				M	19451118	4440 FM 3212	4440	FM 3212		DALLAM COUNTY	79022	4440 FM 3212	DALLAM COUNTY	TX	79022	19760331
9	100507463	ROBERTS	THOMAS				M	19530406	12868 FM 807	12868	FM 807		DALLAM COUNTY	79022	12868 FM 807	DALLAM COUNTY	TX	79022	19760331
10	100507781	HORNE	ELIANE				F	19411218	4624 US HWY 54	4524	US HWY 54		DALLAM COUNTY	79022	4624 US HWY 54	DALLAM COUNTY	TX	79022	19760331
11	100508014	BORTH	HERMAN				M	19450515	4353 FM 3212	4353	FM 3212		DALLAM COUNTY	79022	4353 FM 3212	DALLAM COUNTY	TX	79022	19760331
12	100508190	BORTH	KERRY				F	19491110	4353 FM 3212	4353	FM 3212		DALLAM COUNTY	79022	4353 FM 3212	DALLAM COUNTY	TX	79022	19760331
13	100508248	SUMMEROUR	EDWARD				M	19390901	4428 SUMMEROUR LN	4428	SUMMEROUR LN	LN	DALLAM COUNTY	79022	4428 SUMMEROUR LN	DALLAM COUNTY	TX	79022	19760331
14	100508289	SUMMEROUR	WARRY				M	19400520	4428 SUMMEROUR LN	4428	SUMMEROUR LN	LN	DALLAM COUNTY	79022	4428 SUMMEROUR LN	DALLAM COUNTY	TX	79022	19760331
15	100508327	SUMMEROUR	JAMES				M	19400520	4428 SUMMEROUR LN	4428	SUMMEROUR LN	LN	DALLAM COUNTY	79022	4428 SUMMEROUR LN	DALLAM COUNTY	TX	79022	19760331
16	100508358	SUMMEROUR	HELEN	MAXINE			F	19310223	4434 FM 3212	4434	FM 3212		DALLAM COUNTY	79022	4434 FM 3212	DALLAM COUNTY	TX	79022	19760331
17	100508398	SUMMEROUR	JOHNNY				M	19320818	4434 FM 3212	4434	FM 3212		DALLAM COUNTY	79022	4434 FM 3212	DALLAM COUNTY	TX	79022	19760331
18	100509031	SUMMEROUR	JOHNNY				M	19312009	4438 FM 3212	4438	FM 3212		DALLAM COUNTY	79022	4438 FM 3212	DALLAM COUNTY	TX	79022	19760331
19	100509032	SUTTERFIELD	CHARLES				M	19360518	4438 FM 3212	4438	FM 3212		DALLAM COUNTY	79022	4438 FM 3212	DALLAM COUNTY	TX	79022	19760331
20	100509033	SUTTERFIELD	CHARLES				M	19330622	4972 COUNTRY CLUB LN	4972	COUNTRY CLUB LN	LN	DALLAM COUNTY	79004	4972 COUNTRY CLUB LN	DALLAM COUNTY	TX	79004	19760331
21	100509034	SUTTERFIELD	LOLA				F	19551109	13096 FM 807	14053	FM 807		DALLAM COUNTY	79022	12956 FM 807	DALLAM COUNTY	TX	79022	19760361
22	100509083	WILLARD	JESSE				M	19400611	4063 FM 807	14053	FM 807		DALLAM COUNTY	79022	14053 FM 807	DALLAM COUNTY	TX	79022	19760361
23	100509089	WILLARD	MARTHA	ANN			F	19400611	4063 FM 807	14053	FM 807		DALLAM COUNTY	79022	14053 FM 807	DALLAM COUNTY	TX	79022	19760361
24	100511643	HORNE	LEO				M	19401022	4074 US HWY 54	4524	US HWY 54		DALLAM COUNTY	79022	4524 US HWY 54	DALLAM COUNTY	TX	79022	19760361
25	100512840	CRABTREE	CYNTHIA				F	19460816	13311 FM 807	13311	FM 807		DALLAM COUNTY	79022	13311 FM 807	DALLAM COUNTY	TX	79022	19760361
26	100512846	CRABTREE	ELIJAH				M	19400604	13311 FM 807	13311	FM 807		DALLAM COUNTY	79022	13311 FM 807	DALLAM COUNTY	TX	79022	19760361
27	100514802	CRABTREE	CORREY	DEAN			M	19450909	13361 FM 807	13361	FM 807		DALLAM COUNTY	79022	13361 FM 807	DALLAM COUNTY	TX	79022	19760361
28	100514812	DEMAN	DEBORAH				F	19621217	4521 FM 2899	4521	FM 2899		DALLAM COUNTY	79004	4521 FM 2899	DALLAM COUNTY	TX	79004	19870404
29	100514927	DEMAN	TED				M	19620312	4521 FM 2899	4521	FM 2899		DALLAM COUNTY	79022	PO BOX 31	DALLAM COUNTY	TX	79022	19881008
30	100513360	MCGRACKEN	KIMBERLY	LYNN			F	19630726	4896 US HWY 54	4790	FM 2899		DALLAM COUNTY	79022	PO BOX 1242	DALLAM COUNTY	TX	79022	19930129
31	100517703	REINHART	MICHAEL	SCOTT			M	19690927	4760 FM 2899	4790	FM 2899		DALLAM COUNTY	79022	4440 FM 3212	DALLAM COUNTY	TX	79022	19930329
32	100517702	REINHART	CHERYL	JEAN			F	19441015	4440 FM 3212	4440	FM 3212		DALLAM COUNTY	79022	F O BOX 45	DALLAM COUNTY	TX	79022	19930329
33	100518109	HEISKELL	GLEN				M	19411128	13361 FM 807	13361	FM 807		DALLAM COUNTY	79022	4440 FM 3212	DALLAM COUNTY	TX	79022	19930329
34	100518289	HEISKELL	ALMINTA				F	19460908	4001 US HWY 54	4001	US HWY 54		DALLAM COUNTY	79022	4001 US HWY 54	DALLAM COUNTY	TX	79022	19930329
35	100518281	HEISKELL	MERLE	LEON			M	19401021	4001 US HWY 54	4001	US HWY 54		DALLAM COUNTY	79022	4001 US HWY 54	DALLAM COUNTY	TX	79022	19930329
36	100520218	MCORE	TIMOTHY	EDWARD			M	19771214	12857 US HWY 385	12857	US HWY 385		DALLAM COUNTY	79022	4001 US HWY 54	DALLAM COUNTY	TX	79022	19930329
37	100521426	MCGRACKEN	RANDY	DON			M	19660267	4896 US HWY 54	4896	US HWY 54		DALLAM COUNTY	79022	4001 US HWY 54	DALLAM COUNTY	TX	79022	19930329
38	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
39	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
40	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
41	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
42	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
43	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
44	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
45	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
46	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
47	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
48	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
49	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
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51	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
52	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
53	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
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55	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
56	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
57	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
58	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
59	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
60	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
61	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
62	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
63	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
64	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
65	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
66	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
67	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US HWY 385	DALLAM COUNTY	TX	79022	19930329
68	100523425	MCGRACKEN	LOVY	ALAN			M	19711077	4399 WILLARD LN	4399	WILLARD LN	LN	DALLAM COUNTY	79022	12857 US				